

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF SOUTH CAROLINA  
GREENVILLE DIVISION

Terrence Arnez Daniels,

Petitioner,

v.

United States of America,

Respondent.

C/A No.: 6:05-0762-CMC-WMC  
Cr. No.: 5:01-0736

**ORDER**

Petitioner, a federal inmate proceeding *pro se*, seeks relief pursuant to 18 U.S.C. §§3742 and 3582(c)(2).<sup>1</sup> Petitioner seeks relief from the sentence of imprisonment imposed by this court in 2002. Petitioner has previously filed an untimely petition in this court pursuant to 28 U.S.C. §2255 which was dismissed September 17, 2004. Petitioner now seeks relief via these two sections of the United States Criminal Code.

In accordance with the court's order of reference, 28 U.S.C. § 636(b), and Local Rule 73.02 (B)(2)(c) and (e), DSC, this matter was referred to United States Magistrate Judge William C. Catoe for pre-trial proceedings and a Report and Recommendation. On April 18, 2005, the Magistrate Judge issued a Report recommending this case be dismissed without prejudice and without issuance and service of process because §3742 provides no relief for Petitioner. The Magistrate Judge advised Petitioner of the procedures and requirements for filing objections to the Report and

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<sup>1</sup>Petitioner's original petition sought relief pursuant to 18 U.S.C. §3742(a). However, in a subsequent filing, Petitioner indicates he seeks relief pursuant to 18 U.S.C. §3582(c)(2). *See* Pet'r Resp. at 2, filed Apr. 4, 2005. In his Objections to the Report and Recommendation of the Magistrate Judge, Petitioner again asserts he seeks relief pursuant to 18 U.S.C. §3742. *See* Objection to Magistrate Judges [sic] Report and Recommendation filed Apr. 29, 2005. Because Petitioner's action fails under either scenario, the court will address both.

Recommendation and the serious consequences if he failed to do so. Petitioner filed objections on April 29, 2005.

The Magistrate Judge makes only a recommendation to this court. The recommendation has no presumptive weight, and the responsibility to make a final determination remains with the court. *See Mathews v. Weber*, 423 U.S. 261 (1976). The court is charged with making a *de novo* determination of any portion of the Report and Recommendation of the Magistrate Judge to which a specific objection is made. The court may accept, reject, or modify, in whole or in part, the recommendation made by the Magistrate Judge or recommit the matter to the Magistrate Judge with instructions. *See* 28 U.S.C. § 636(b).

After reviewing the record of this matter, the applicable law, and the Report and Recommendation of the Magistrate Judge, the court agrees with the ultimate determination of the Magistrate Judge that this matter should be dismissed.<sup>2</sup> There is no relief available for Petitioner under §3742 because this section merely authorizes direct appeals of sentences imposed in the district courts to the courts of appeal. Petitioner can also find no relief pursuant to §3582(c)(2). Pursuant to this section, the court “may not modify a term of imprisonment once it has been imposed except that . . . in the case of a defendant who has been sentenced to a term of imprisonment based on a sentencing range that has subsequently been lowered by the Sentencing Commission pursuant to 28 U.S.C. § 994(o), the court may reduce the term of imprisonment, after considering the factors set forth in section 3553(a).” 18 U.S.C. § 3582(c)(2).

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<sup>2</sup>The court notes that the Magistrate Judge has confused two criminal defendants in this court: the Petitioner (Terrence Arnez Daniels, a defendant in criminal case number 5:01-0736-02 (CMC)) and Terrence Daniels (a defendant in criminal number 3:04-0330-01 (CMC)). These individuals are unrelated.

Petitioner has not shown that the Sentencing Commission lowered the sentencing range within which the court sentenced him. The invalidation of the mandatory nature of the Federal Sentencing Guidelines in *United States v. Booker*, 543 U.S. \_\_\_, 125 S. Ct. 738 (2005), did not lower any of the sentencing ranges.

IT IS THEREFORE ORDERED that the Petition is dismissed without prejudice and without service of process.

**IT IS SO ORDERED.**

s/ Cameron McGowan Currie  
CAMERON MCGOWAN CURRIE  
UNITED STATES DISTRICT JUDGE

Columbia, South Carolina  
May 19, 2005

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